The real meaning of this sub-section is admirably illustrated by the facts of this case; the ordinary workmen were within the sub-section. The two leading fitters were manifestly not within the sub-section because they did not only pay; they actively collected and they exerted pressure in doing so; on their own showing they used the methods of extortioners.

It is not necessary to analyse the evidence in great detail. The general tenor of the judgment is this. The learned Magistrate sets out the case for the prosecution without saying how much of it he accepted. He was asked to rule that it did not establish a *prima facie* case — because there was no evidence, except that of two accomplices, implicating the accused. He overruled this submission, relying on *Ismail's* case, *supra,* at page 140 and on section 13(3) of the Prevention of Corruption Ordinance. This was a correct application of *Ismail's* case at that stage. The coupling of the section with the case, however, in one sentence, makes the reasons for the ruling very obscure. Having called the defence, the learned Magistrate criticised it in a manner which was, in my opinion, unnecessarily severe and, in some respects, ill-founded. To give one example, he thought that the suggestion that the case had been "framed" was unreasonable because it is difficult to frame a case which requires the concurrence of a large number of witnesses. That is a serious misdirection on the facts of this case. It was common ground that the two leading fitters had obtained the money from the workmen by saying it was for the foreman; the workmen believed this and paid; but their belief does not prove that any of the money reached the foreman. Not one of the workmen ever paid it to him or even spoke with him on the matter.

Only the two leading fitters implicated the accused. If the case was framed, only those two were concerned in the framing. The suggestion may have been untrue but it was not unreasonable.

Having rejected the defence the learned Magistrate reconsidered the whole record and found the prosecution evidence to be correct; he accordingly convicted the accused.

In my view this was a misdirection. Read as a whole the judgment comes to this; he found that the prosecution had set up a *prima facie* case and called on the defence; he rejected the defence and convicted the accused. This is perilously near to applying the standard of proof applicable to civil cases. The method is wrong. Where the defence fails it is still necessary to go back and examine the prosecution case by itself to see whether it goes beyond the *prima facie* stage and establishes guilt beyond reasonable doubt. Here, the fact that an offence had been committed was clearly proved. The sole question remaining was whether the accused took part in it. The only evidence that he did so was that of two men who certainly took part in it. They did not merely pay; they collected, and were therefore not within the Ordinance. The record does not shew that the Magistrate appreciated the danger of convicting on the uncorroborated evidence of accomplices. The case was not proved beyond reasonable doubt so the conviction and sentence must be quashed.

There was one minor point; a purported police report was proved but it was not the first report and, therefore, in law, it was an investigation statement and inadmissible as in *Daimon's* case, *supra.* The learned Deputy Public Prosecutor conceded that it was inadmissible. In any event it had little probative value and the Magistrate never attached any weight to it. This was illegal only in the sense that it was a misreception of evidence, and since it had no effect as evidence it does not vitiate the trial.

Appeal allowed.

THE DEPUTY COMMISSIONER OF LABOUR, PERAK, for and on behalf of the dependants of YAHAYA BIN MAT (DECEASED)

v.

THE SITIAWAN TRANSPORT COMPANY, LTD.

[App. Civ. Juris. (Thomson, J.) March 10, 1951]

[Ipoh — Civil Appeal No. 28 of 1950]

Workmen's Compensation — Accident — Workmen's compensation liability — General principals of — Workmen's Compensation Enactment (Cap. 155) s. 3(1).

The facts in this were as follows:

In the early afternoon of 13th March, 1950, a police vehicle proceeding from Bruas in the direction of Sitiawan was ambushed by bandits at the 39th Mile on the Bruas-Sitiawan Road. Three Police officers and a civilian were killed and the vehicle was set on fire. Shortly afterwards, a bus belonging to the respondent company which was approaching the scene of this ambush from the direction of Sitiawan was also stopped by bandits, presumably the same body as had attacked the Police vehicle. The persons within the bus were required to leave it, the passengers being required to stand on one side of the road while the deceased, who was the conductor of the bus, and the driver were required to stand on the other. The passengers were required to deliver up their identification cards. One of the bandits shot the deceased at close range causing him to fall down. The bus was then damaged and set on fire and the bandits departed taking with them the bus collections. At some stage of the proceedings after he was shot the deceased had his throat cut by a bandit, and, although there is no direct evidence

as to the cause of death, it has been common ground that death occurred as a direct result of one or other or both of the injuries inflicted.

It was admitted that under the circumstances the deceased met his death by accident and that that accident arose in the course of his employment. The respondent Company, however, denied that it arose in the course of his employment. The Commissioner accepted that view and dismissed the application. This appeal was against that decision.

Held, that under the circumstances the deceased met his death as a result of an injury caused to him by accident arising out of and in the course of his employment. Appeal allowed — Compensation awarded to the dependants.

Case referred to:—

(1) *Wilson v. Chatterton* (1946) 1 All E.R. 431.

APPEAL from a decision of the Commissioner for Workmen's Compensation at Ipoh.

B. J. Jennings for the appellant.

Tan Cheng Hock for the respondent.

The facts of the case appear sufficiently from the judgment.

Cur. Adv. Vult.

Thomson, J. : — This is an appeal from a decision of the Commissioner for Workmen's Compensation at Ipoh.

The evidence in the case was heard and recorded by a Commissioner who died before he could make any order and by agreement between the parties the matter was decided by the present Commissioner on the evidence recorded by his predecessor which was treated as an agreed statement of facts. This course presented no difficulties because at the hearing there was no conflict of testimony on any point of importance but in the circumstances the Commissioner enjoyed no advantage which has not been equally enjoyed by myself.

The facts are simple and straightforward.

The applicants, who are the present appellants, are the dependants of one Yahaya bin Mat, now deceased, who was employed as a bus conductor by the Sitiawan Transport Co., Ltd., the present respondents, at a monthly wage of $151.50.

In the early afternoon of 13th March, 1950, a police vehicle proceeding from Bruas in the direction of Sitiawan was ambused by bandits at the 39th Mile on the Bruas-Sitiawan Road. Three Police officers and a civilian were killed and the vehicle was set on fire. Shortly afterwards, a bus belonging to the respondent company which was approaching the scene of this ambush from the direction of Sitiawan was also stopped by bandits, presumably the same body as had attacked the Police vehicle. The persons within the bus were required to leave it, the passengers being required to stand on one side of the road while the deceased, who was the conductor of the bus, and the driver were required to stand on the other. The passengers were required to deliver up their identification cards. One of the bandits shot the deceased at close range causing him to fall down. The bus was then damaged and set on fire and the bandits departed taking with them the bus collections. At some stage of the proceedings after he was shot the deceased had his throat cut by a bandit, and, although there is no direct evidence as to the cause of death, it has been common ground that death occurred as a direct result of one or other or both of the injuries inflicted.

It has at all times been admitted that in these circumsances the deceased met his death by accident and that that accident arose in the course of his employment. The respondent company, however, denied that it arose out of his employment. The Commissioner accepted that view and dismissed the application. It is against that decision that the applicants have now appealed.

The Commission based his decision on the fact that the deceased was the only person shot in the course of the occurrence. He felt that before he could find for the applicants there should be "proof that he was selected for some reason attendent upon his employment", and he was of the opinion that the applicants had not produced any such proof. He went on to say it was possible that the deceased was a member of some active anti-bandit organisation totally unconnected with his employment.

To my mind the Commissioner has taken an unduly narrow view of the matter. In particular he seems to have ignored the fact that the bus collections were taken by the bandits and he seems to have ignored certain facts which were not in evidence but of which he should have taken judicial notice. It is a matter of common knowledge that this unhappy country is suffering from the activities of bands of ferocious and, by our standards, lawless men armed with modern weapons who in pursuit of certain political aims habitually practice murder, arson, theft and other offences against person and property. Among other things, these men are in the habit of impairing the efficient working of the National Registration system by stealing the Identification Cards of ordinary citizens and of attempting to disrupt the transport system of the country by attacking trains and buses. They also when opportunity offers steal sums of money to finance their activities.

It is clear that the attack on the bus in the present case was that of a band of such men. Both in place and time it occurred in close proximity to a murderous attack on the Police. In the course of it, apart from the killing of deceased, the bus was burned, identification cards were stolen and so were the bus collections.

The question of workmen's compensation liability in such circumstances is one which, so far as I am aware, has never before claimed the attention of the Court and which must accordingly be dealt with in the light of general principles. The most modern exposition of these is to be found in the case of *Wilson v. Chatterton*[1] which was a case where an epileptic employed as a farm labourer had a fit in the course of his employment and fell into some water on his employer's premises whereby he was drowned. Scott, L.J., delivering the judgment of the Court, pointed out that the real basis of workmen's compensation is formulated in the words of the statute:—

"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall . . . . .".

He went on to say that it is essential that these words should be considered as a whole with due regard to the light thrown upon each word by the words associated with it, and he indicated as an illustration of this aid to construction and the danger of disregarding it that insufficient attention is sometimes given to the word "caused" and its proper meaning. He then made the following observations:—

"At an early stage in the judicial interpretation of the legislation, it was realised that the problem of ascertaining causation in the case of accidental injuries within the Act was analogous to the problem of ascertaining a loss under a policy of insurance. In other words the normal rule of causa proxima applied; see the judgments of the Court of Appeal in Wicks v. Dowell, where the court acted on the insurance principle. It is true that the words "arising out of and in the course of the employment" impose two conditions precedent in the statutory obligation of the employer, and that the words "out of" introduce a factor which might seem to throw back the inquiry into causation one step further from the final effect than the words "in the course of". But so to read the condition is, in our opinion, to misread it. It is only if the accidental injury has no causal connection with the employment at all that it can be said not to arise out of it, though it may occur in the course of it. It is for that reason that the employer cannot escape liability by showing that some factor such as disease is a predisposing or even contributing cause of the injury; he must show that it is the sole cause, as has been said frequently in decided cases."

Here it is admitted that the accident arose in the course of the employment. Can it, then, be said that there was no causal connection at all between the employment of deceased on the bus and his death as a result of the accident? I am not suggesting for one moment that at any stage in the proceedings there was any technical reversal of the onus of proof which all along lay upon the applicants. On the face of it, however, the killing of deceased was part and parcel of the outrage as a whole and the outrage was carried out in pursuance of the terrorists' policy of disrupting public transport services which the deceased was assisting in operating. Moreover, the deceased was present at the scene of the outrage by reason of his employment and he was present as the agent of the operating company and as the custodian of its money. In the circumstances, the employer if he wishes the inference to be drawn that the sole cause of deceased's death was some cause wholly unconnected with his employment must point to something in the evidence from which such an inference may legitimately be drawn.

The only fact upon which the employer can rely in this conection is the bare fact that the driver was not killed. Several different inferences, however, can be drawn from that fact and the strongest of them which could be drawn in favour of the employer is that for some reason the conductor was more obnoxious to the terrorists than was the driver. Whether the reason for that was that he was the conductor or that he was the man in charge of his employer's money or was some reason wholly unconnected with his employment but of which there is no evidence it is impossible to say. But even if that inference be drawn in the form most favourable to the employer it is not enough. There is not the slight ground for suggesting that the object of the bandits in initiating and carrying out the outrage was in any way connected with a desire to kill the deceased for reasons unconnected with his employment, and even if in the course of the outrage they did discover (and I reiterate there is no evidence of this) that the deceased was a person they wished to kill in his personal capacity, I fail to see that it can be said that his death had no causal connection at all with his employment in the course of which the accident which caused it arose.

In the circumstances, I have no hesitation in saying that the Commissioner ought to have held that deceased met his death as a result of an injury caused to him by accident arising out of and in the course of his employment and accordingly I allow the appeal.

It has never been disputed that the applicants are the dependants of the deceased nor that the amount of compensation payable to them would, in the event of the case falling within the Enactment, be $3,200. There will therefore be an award in their favour for that sum.

The costs here and in the Court below will follow the result of this appeal.

Appeal allowed.